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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 11, 1986

96-2453
SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

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SUBJECT: State letter to OMB on their views on H.R. 4151 as passed the Senate. Please review in anticipation of this being the basis of State's letter to the Conferees.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than FRIDAY, JULY 18, 1986.

Questions should be referred to SUE THAU/ANNETTE ROONEY (395-7300), the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

SPECIAL

cc: R. NEELY
M. MARGESON
J. NIX
P. SCHEINBERG

S. MERTENS
B. COLEMAN (OFPP)
D. HUNN



United States Department of State

Washington, D.C. 20520

July 11, 1986

Dear Mr. Miller:

This letter is in response to your July 1 request for comments on H.R. 4151, the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986, as passed by the Senate on June 25.

In general, we consider this to be important and helpful legislation. As compared with the House version, however, we have four major concerns.

First, we continue to believe the \$4.4 billion, five year authorization proposed by the Administration and included in the House version of section 401 is an essential commitment of support from the Congress as the Department embarks on this program. The \$1.1 billion, two year authorization in the Senate version is insufficient to implement the program. In addition, we strongly reaffirm the original administration request for Counterterrorism research and development. The Senate proposed cut in this item would seriously hamper and retard interagency efforts to develop new countermeasures and defenses to thwart terrorist attacks such as those employing new detonating devices or concealment technology.

Second, we also consider it very important that the victims of terrorism compensation legislation, which is included as Title VIII of the House version but omitted from the Senate version, be enacted as part of H.R. 4151. Past experience has demonstrated the need to have legislation in place, in order that employees and their dependents can be assured that necessary assistance will be available, and in order to permit the Government to respond in a timely fashion in case of need.

Third, we have major concerns regarding section 716 of the Senate version, which was added as a floor amendment, regarding the Independent Inspector General for the Department of State. This amendment is neither necessary nor wise. The Department of State is anxious to establish the Office of the Inspector General, as mandated by Section 150 of P.L. 99-93, and has completed extensive preparations. Abolition of the Program Inspector General, however, without providing for an adequate transition will leave the Department without any inspection or

The Honorable
James C. Miller, III, Director,
Office of Management and Budget

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audit capacity for as much as a year, while the Office of the Inspector General becomes fully established. In the long run, moreover, we believe that the 209(g) foreign policy review activity is an important management function which should be within the responsibility of the Secretary of State rather than the Inspector General. Further, the funds earmarked for the Inspector General in section 716(a) are excessive in relation to actual need, and the prohibitions on use of foreign service members are exceptional and unnecessary.

Finally, we strongly oppose section 717, concerning funds for security construction in Israel, on two grounds: the security of our personnel and fundamental, long-standing U.S. policy toward the status of Jerusalem. Section 717 offers the Administration a totally unacceptable choice of not replacing our facilities in Tel Aviv and in Jerusalem, or building an Embassy in Jerusalem. We cannot accept that our personnel in both these cities would be required to continue to function in buildings whose security is gravely inadequate. Also, to build an Embassy in Jerusalem while the status of that city is still unresolved would reverse a nearly 40 year old U.S. policy and prejudice our ability to seek a negotiated settlement to the conflict that besets the area, including the status of Jerusalem. Construction of secure facilities on new sites in Tel Aviv and Jerusalem will be without prejudice to the ultimate location of our Embassy and does not in any way preclude other arrangements and solutions. The sites will be designed to be interchangeable and expandable to accommodate changed functions, since we will retain a need for a large, secure facility in Tel Aviv, irrespective of the ultimate resolution of the question of the site of the U.S. Embassy to Israel. There are also grave concerns as to the amendment's consistency with the spirit, if not the letter, of the Constitution.

In addition to the above major concerns, we offer the following comments on other significant problems and issues which will be addressed in conference.

Titles I-IV.

The Senate version of Section 105, providing that the Assistant Secretary for Diplomatic Security shall have such responsibilities as the Secretary of State shall designate, is preferable to the detailed micromanagement specifications of responsibility contained in the House version, which would limit the Secretary's authority for management and flexibility in adapting to changing situations.

As presently written, the Senate version of section 402,

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concerning preference for American contractors, could lead to excessive costs and practical difficulties which we believe are unintended. Section 402(a) effectively requires that all projects be awarded to U.S. contractors where there are two qualifying U.S. bidders, without regard to cost implications. For the large capital construction projects, the use of U.S. general contractors should not have significant cost implications. For certain types of non-capital mid-range projects, however, such as rehabilitation, the use of U.S. contractors will entail greatly increased costs because U.S. labor would be imported. Section 402(f) of the Senate version, as currently written, also has significant implications for the cost and feasibility of projects. The Department agrees with the thrust of this section, and is strengthening security procedures in this area, but notes that a security clearance per se will in many cases be an excessive requirement which it may not be reasonably possible to comply with.

The Department also agrees with the thrust of Section 405(c) of the Senate version, regarding disqualification of persons doing business with Libya, but believes that it should be clarified that it applies to direct contractors rather than subcontractors. In some countries, notably the middle east, a broad and flat exclusion of local subcontractors would be costly and impractical.

With regard to Section 408 of the Senate version, we believe it should be clarified to provide that "the costs incurred by the United States Secret Service, as agreed to by the Secretary of the Treasury and the Secretary of State" be reimbursed, and that, after F.Y. 87, the Department of Treasury should seek direct appropriation of the necessary funds.

Title V.

We consider the Senate version of this Title to be preferable. The sections which are included in the Senate version, along with the Senate section 714 (the former S. 1429 introduced by Senator Specter) provide useful and important new authorities in the fight against terrorism. Of the additional provisions included in the House version, we have particular concern regarding section 501 (most wanted international terrorists list) and section 509 (exports to countries supporting terrorism). As the Department of Justice and others have noted, section 501 may have in some cases a contrary effect to what is intended by providing additional "status" to certain terrorists. Section 509 is unnecessary because there is ample authority under existing legislation, which the Administration has used actively, to deny exports that would contribute to the military capabilities of terrorist supporting

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countries or enhance their ability to support international terrorism.

Title VI (House version, international nuclear terrorism).

We do not believe that this title, as contained in the House version, is necessary. Several provisions in particular could cause significant difficulties. In Section 601, the requirement "to keep to an absolute minimum" weapons-grade nuclear material in international transit could be interpreted by our allies as requiring U.S. efforts to deter or dissuade them from making shipments except as a last resort. This could be detrimental to our efforts to work together with our allies to create an effective regime for assuring physical security. Similarly, the legislative language that states "the most effective means" be used for protecting nuclear material in transit can be read as unrealistically restrictive. It can subject each shipment to endless debate as to whether the physical security used is the "most" effective means that could be taken. Section 604, which calls for multiple separate agency reviews and reports on shipment and storage, will inevitably generate administrative inefficiency and confusion. Sections 602 and 603 are unnecessary, and could be read to prejudice existing mechanisms and authority which are functioning well. Section 605 seeks to direct Presidential judgment as to whether and when international conference action would be in our interests. This problem is discussed at greater length below.

Title VII (House Version, multilateral cooperation)

The provisions of the House version of Title VII, along with sections 708, 713, 718 and 719 of the Senate version, do not provide new legislative tools or authorities, but rather seek to direct the President in the conduct of international diplomatic relations. The conduct of international diplomatic negotiations typically involves strategic and tactical considerations which lie particularly within the judgment and responsibility of the Executive Branch. Over the past six months, we have made considerable headway in developing more effective channels for consultations with our allies on counter-terrorism cooperation, including within the NATO context. We have also made significant progress with the U.N. General Assembly, and in other contexts and fora. As demonstrated by recent European actions, these channels are paying off.

Thus, while we endorse and pursue the general objectives and concerns underlying these provisions, such detailed direction is not useful and could be counter-productive.

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Attempting to establish at NATO a political committee on international terrorism, for example, could well complicate rather than facilitate our efforts. Similarly, negotiations regarding deletion of the place of birth from passports seems a questionable priority. Within the U.S. Government, the Department of Justice and other agencies have expressed concern whether the deletion of this information might hinder law enforcement.

Title VII (Senate version)

Sections 708, 713, 714, and 716-719 have been discussed above. In addition, we note the following. Section 702, which repeals the so-called "500 foot rule" of the D.C. Code for protection of foreign diplomatic premises, seems to undercut, rather than strengthen, protection against terrorism. We understand that the Secret Service and Department of Justice oppose such repeal, since this provision significantly strengthens the protection provided by federal law, i.e., 18 U.S.C. 112. The security of our missions and personnel abroad is directly and sometimes immediately related to the degree of protection we provide the facilities of other countries in the District of Columbia.

Finally, the Department notes its strong support for section 705, as meeting an urgent need for upgraded airport security. We believe, however, that it would be more appropriate for the Department of State to administer this provision, in coordination with A.I.D.

With best wishes,

Sincerely,



J. Edward Fox
Assistant Secretary
Legislative and Intergovernmental Affairs